

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 11 of 1996

Hon'ble MR.JUSTICE Y.B.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANUBHAI VITHALBHAI PATEL DECEASED THRO' HEIRS & L.R.

Versus

BANK OF BARODA

Appearance:

MR. NILESH PANDYA for the appellants

MR PANNALAL J SHAH for Respondent

CORAM : MR.JUSTICE Y.B.BHATT

Date of decision: 19/02/97

ORAL JUDGEMENT

1. At the joint request of learned counsel for the parties, the appeal is taken up for final hearing today.

2. As a result of the hearing and discussion, a consensus has been arrived at between the learned counsel, on the basis of which the following observations are required to be made, and consequential directions given.

3. It is an admitted fact that the trial court dismissed the suit on a preliminary issue, simply by holding that the suit is barred by limitation. In an appeal from the dismissal of the suit, the lower appellate court reversed the finding of the trial court and recorded a finding that the suit is not barred by limitation. However, the lower appellate court went further and passed a decree in favour of the plaintiff bank, while ignoring the fact that the suit was dismissed i.e. disposed of on a preliminary issue without raising any other issues on the merits of the controversy, and without recording any evidence whatsoever. It is, therefore, obvious that the lower appellate court had seriously erred in law in passing a decree in favour of the plaintiff bank.

4. In view of this situation, the judgement and decree of the lower appellate court impugned in the present appeal is quashed and set aside. Consequently, the matter is remanded back to the trial court with a direction that the trial court shall first raise necessary issues on the controversy between the parties, record such evidence as the parties may choose to bring on record, and decide the suit on merits and in accordance with law, on all the issues that may have been framed.

5. It is clarified that this court does not record any finding on the merits of the issue pertaining to limitation, inasmuch as the same issue is once again open before the trial court, which the trial court will consider and decide along with other issues that may arise. The trial court is expected to decide the issue of limitation without being influenced by the judgement and decree of the lower appellate court, which is hereby quashed and set aside.

6. This appeal is accordingly allowed with no order as to costs.
